

MEMORANDUM

DATE: June 2, 2006

TO: Oil Spill Advisory Council
Rob Frazier, Environmental International, Inc.

FROM: Jacqui Brown Miller, Research and Policy Director
Washington Oil Spill Advisory Council

SUBJECT: Recommendations of Council on Improvements to the Derelict Vessel Program's Ability to Prevent Oil Spills from recommendations of Derelict Vessel Technical Advisory Committee

I. Introduction

On May 18, 2006, the Washington Oil Spill Advisory Council reviewed recommendations made to it from the Derelict Vessel Technical Advisory Committee ("DV TAC"), which was formed at the Council's March 2006 meeting. This memo reflects the recommendations of the DV TAC that were adopted by the full Council.

Please include this information in your prevention report that you will deliver to the Council in early July.

II. Composition of Technical Advisory Committee

The Committee was comprised of Brett Bishop, Council Member and Co-chair; Nick Jones, Council Member and Co-chair; Lee Roussel, Council Member; Greg Whittaker, Council Member; and Bruce Marshall, Harbor Director at the Port of Olympia.

Others who participated in the discussions were Rick Mraz, Aquatics, Department of Natural Resources ("DNR"); Kevin Parrington, U.S. Coast Guard (USCG); and Jacqui Brown Miller, Council staff.

III. Charge of Derelict Vessel Technical Advisory Committee

The DV TAC was charged with reviewing the universe of reports available on derelict vessels in Washington. The committee was to provide a critical analysis of these reports and articulate a recommendation to the Council on how to improve the derelict vessel program to eliminate oil spills from these vessels.

IV. Council approved recommendations of the Derelict Vessel TAC

A. Close the Derelict Vessel Pipeline

The best way to prevent oil spills from derelict and abandoned vessels is to close the influx of these vessels into the “system.” The focus should be on finding creative and effective ways to stop irresponsible people from allowing their boats to become dilapidated while remaining in waters of the State of Washington.

1. Marina Slip Rental Registration Requirement

The Council recommends legislation requiring marinas or state agencies managing state-owned aquatic lands to lease boat slips only after obtaining proof of current vessel registration as a condition of the boat slip lease. The Council recommends that DNR engage in this practice beginning immediately as it renews marina leases.

2. Shutting Down Frequent Flyers

On June 7, 2006, a new law relating to derelict vessel misdemeanors will become effective. Under this law, a boat owner causing a vessel to become derelict can be prosecuted for a misdemeanor. The Council endorses this provision.

In addition, the Council requests that DNR gather information and statistics on the effectiveness of the misdemeanor language and report back to the Council in one year on the effectiveness of this provision in stopping repeat offenders.

If the misdemeanor sanction is insufficient to stop repeat offenses, the Council will consider recommending to the Legislature that a new law be passed making it illegal for “frequent flyers” (those with one or more misdemeanor convictions) to own a boat without registering the vessel, having specified sufficient insurance, or obtaining a sufficient bond to cover costs if the vessel becomes derelict. At that time, the Council would also consider recommending that the Legislature escalate the seriousness of the offence’s classification. For example, this new crime, owning a vessel as a repeat offender without complying with the insurance and bonding requirement, could be a gross misdemeanor or felony.

3. Amnesty Program

The Council requests that DNR and the Department of Ecology investigate and make a recommendation to the Council regarding an Amnesty Program. It is anticipated that under such a program citizens could dispose of unwanted vessels before they become dilapidated to the point of becoming derelict. The Council also requests that DNR and Ecology provide the Council with a statement of any statutory changes they find would be needed to allow DNR and Ecology to manage and fund this program. The Council further requests that DNR and Ecology provide the Council with their ideas on the best funding sources and funding arrangements for an amnesty program.

Once it receives and reviews this information, the Council will recommend that the Legislature create an Amnesty Program.

In addition, the Council recommends that the Legislature create a grant program that would fund boat yard owners wanting to properly dispose of vessels heading for the derelict or abandoned vessel pipeline. This program could be administered through DNR's Abandoned and Derelict Vessel Program.

B. Changes to DNR's Program

1. "Backlog"

The DV TAC learned from DNR that the anticipated costs of removing formerly commercial derelict vessels exceeds the funding currently available to the DNR's Abandoned and Derelict Vessel Program.

Therefore, the Council recommends that the Legislature do a one-time allocation of funds sufficient to handle what some have coined a "backlog" of derelict vessels—a large number of formerly commercial derelict vessels, the disposal of which will be extremely expensive and, to date, has been cost prohibitive. If, thereafter, the derelict vessel program is properly funded (as provided *infra* in section B2), the Council understands that this "backlog" should not reappear.

The DV TAC learned that DNR currently estimates it will need over \$4 million to eliminate the current commercial derelict vessel "backlog." The DV TAC understands that DNR estimates that \$1 million to 1.5 million over five years would provide funds sufficient to handle the "backlog" and also any anticipated new influx of formerly commercial derelict vessels into the program. Chairman Cooper also believes that a one-time allocation from the Toxics Account, managed by Ecology could be used to pair down the "backlog."

2. Bifurcate DNR Program and Add New Commercial Vessel Revenue Stream

The DV TAC learned from DNR that the majority of the vessels being handled by the derelict vessel program are formerly commercial vessels, yet the entire program is funded solely from a recreational vessel registration program.

The Council recommends that the Legislature bifurcate DNR's Abandoned and Derelict Vessel Program between commercial and recreational boats. The Council further recommends that the Legislature create a new funding source derived solely from commercial vessel owners and operators to fund DNR's ability to deal with formerly commercial vessels that have become abandoned or derelict. We recommend that DNR place this revenue source in a separate account and not commingle it with recreational vessel funds as it should be used solely to handle formerly commercial derelict vessels.

The Council would like Environmental International to analyze the best commercial-vessel related revenue stream to tap as part of your revenue analysis.

3. New statutory authority to DNR for taking temporary custody of a vessel's posing reasonably imminent threats

The Council recommends that the Legislature grant DNR new statutory authority to take temporary custody of a vessel if the vessel poses a reasonably imminent threat to human health or safety, which would include threats from environmental contamination. With this change, DNR could remove vessels that pose environmental or navigational risks not quite to the threshold at which the U.S. Coast Guard will become involved in disposing a vessel.

4. Change DNR Priority Ranking System

The Council makes two recommendations to DNR regarding its Priority Ranking system. The Council understands from DNR that DNR can make changes to this system as a matter of rule or policy.

First, the Council recommends that DNR leave intact the Priority Ranking of all vessels at the time when any governmental agency steps in to remediate contamination or other threats from the vessel.

The purpose of this recommendation is to eliminate the likelihood that an entity, like the Coast Guard, will remediate the contamination or navigation threat but must legally leave the boat in place where it can easily become a repeat problem vessel. We understand that if DNR decreases a vessel's Priority Ranking after another entity responds to it, DNR will be unable to remove the vessel from the water if it falls below other vessels in Priority Ranking. This change will allow DNR to remove vessels before they become re-contaminated.

The caveat to this recommendation may be where a responsible owner owns a boat, even though it is legally considered derelict, such that DNR is assured to its satisfaction that the vessel will not pose an immediate risk.

Second, the Council recommends that DNR eliminate the Ranking of Priority 3A then moving all of these to Priority 2 Ranking. If this is done, and the Legislature changes the statute to allow DNR to take temporary custody of vessels that pose a reasonably imminent threat to human health or safety, DNR will have the ability to take temporary possession of more risky and problem vessels (for example those that have sunk but still have fuel aboard).